IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.187 OF 2007

Shri Prakash Dinkar Patil ..Appellant.

V/s.

The Municipal Corporation of Gr. Bombay & Ors. ..Respondents.

AND

APPEAL FROM ORDER NO.188 OF 2007

Nivrutti D. Pawale ..Appellant.

V/s.

The Municipal Corporation of Gr. Bombay & Ors. ..Respondents.

Mr.Pramod N.Joshi for appellant in both matters.

Mrs.Geeta Joglekar for respondents in both matters.

CORAM : ABHAY S.OKA, J.

DATED : 13th APRIL, 2007.

P.C. :-

Admit. Advocate for first and second respondent waives service. Notice to 3rd respondent has been served and affidavit of service has been filed.

2. By the impugned judgment and order, ad-interim relief has been refused by the learned Judge of the City Civil Court, Mumbai.

3. Appellant is relying upon the agreement executed in his favour by the third respondent which is a Government of Maharashtra undertaking. The contention of the appellant is that the structure as it exists today was allotted to the appellant under the agreement executed by the third respondent. A copy of an agreement of allotment is placed on record. The challenge in the suit is to the notice under section 351 of the Bombay Municipal Corporation Act, 1888 and the order made thereon. It appears that the notice u/s.351 of the said Act of 1888 was served to the Bombay Port Trust and the third respondent herein. Since the appellant is claiming on the basis of the agreement executed by a Government of Maharashtra undertaking, considering the facts and circumstances of the case the structure deserves to be protected till the Notice of Motion is heard. The appellant will have to implead the Bombay Port Trust as well as the third respondent herein as party defendants in the suit. The trial Court will have to be directed to dispose of the Notice of Motion expeditiously.

4. Hence appeal is disposed of by passing the following order.

i. Impugned order is quashed and set aside. Till the disposal of the Notice of Motion, status quo as of today shall be maintained in respect of the suit structure.

ii. Appellant will implead the Bombay Port Trust as well as the third respondent herein as parties to the suit.

iii. The trial Court will permit the amendment on the basis of a formal application made by the appellant.

iv. Notice of Motion shall be finally disposed of as expeditiously as possible in any event on or before 31st July, 2007.

v. All contentions of the parties in the pending Notice of Motion are expressly kept open.

vi. Appeals are allowed in above terms with no order as to costs.

vii. Writ to be sent forthwith.

(ABHAY S. OKA, J.)